

RESOLUTION NO. 20-1339

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL CONSULTING CONTRACT WITH FCS GROUP, FOR ON-CALL FISCAL ANALYSIS SERVICES TO BE PROVIDED TO THE MDRT

**WHEREAS**, the City's Master Development Review Team (MDRT) does not have an on-call fiscal analysis consultant to review and evaluate the fiscal impacts analysis provided by the Master Developer per Section 13.6 the Development Agreements for The Villages and Lawson Hills Master Planned Developments; and

**WHEREAS**, the City's contract with Henderson, Young and Company Inc. has expired and there is a need for fiscal analysis services so that the City and the MDRT may continue to meet their permitting responsibilities under state and local law; and


**WHEREAS**, FCS Group is willing and able to provide the requested services on the terms and conditions set forth in the contract attached hereto as Attachment A;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:**

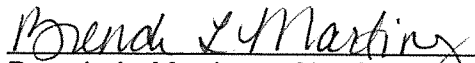
**Section 1.** The Mayor is hereby authorized to execute a professional services contract between the City and FCS Group, Inc., for the provision of fiscal analysis services to the MDRT in an amount not to exceed \$20,000, substantially in the form attached hereto as Attachment A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF FEBRUARY, 2020.**

CITY OF BLACK DIAMOND:

  
\_\_\_\_\_  
Carol Benson, Mayor

Attest:

  
\_\_\_\_\_  
Brenda L. Martinez, City Clerk

COPY

**ON-CALL CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF BLACK DIAMOND AND  
FINANCIAL CONSULTING SOLUTIONS GROUP, INC. FOR  
FISCAL ANALYSIS CONSULTING SERVICES**

THIS AGREEMENT is made effective as of February 6, 2020, by and between the City of Black Diamond, a Washington municipal corporation (hereinafter the "City"), and Financial Consulting Solutions Group, Inc. (hereinafter the "Consultant,"), a corporation organized under the laws of the State of Washington, located and doing business at 7525 166th Ave NE D-215, Redmond, WA 98052

**RECITALS**

WHEREAS, the City's Master Development Review Team (MDRT) is in need of fiscal analysis services to handle on-call tasks as assigned by the City; and

WHEREAS, the Consultant has been previously interviewed to determine Consultant's qualifications to provide fiscal analysis services to the City, and the City has determined that Consultant can provide the needed services in a timely and cost-effective manner; and

WHEREAS, the City desires for the Consultant to provide fiscal analysis services and the Consultant has agreed to provide such services on the terms and conditions provided in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

**TERMS**

**I. Description of Work.**

The Consultant shall assign professional fiscal analysis staff, as identified in Exhibit A, to the City to perform on-call fiscal analysis services for the period identified in Section IV. Such consulting services shall include, but not be limited to, reviewing fiscal impact analysis reports provided by the Master Developer and assisting the City in reviewing, analyzing, and/or preparing other fiscal impact studies relating to the Ten Trails and/or Lawson Hills master planned developments.

The City shall issue a written Task Order for each project assigned to the Consultant. The written Task Order shall include the following information, which may be furnished in consultation with the Consultant: (1) Task Order Title (project name); (2) technical approach to the task (if necessary); (3) specific deliverables; (4) schedule with milestones and deliverables; (5) cost/hour estimate; (6) due date of work. All of these items may be brief, but will be sufficiently detailed for the Consultant to understand the work being authorized and for the City to understand the amount it is expected to cost.

Written Task Orders (Exhibit C) and Notices to Proceed may be issued as e-mail documents.

The Consultant represents and warrants that it and any staff member assigned to the work will have the requisite training, skill, and experience necessary to provide the services required by this Agreement and if required, are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant and its subconsultant(s) under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. The Consultant shall not subcontract with any subconsultant for the performance of any work under this Agreement without prior written permission of the City.

## II. Payment

A. The City shall pay the Consultant an hourly rate from the current fee schedule in Exhibit B. The payment made by the City to the Consultant shall not exceed \$20,000 for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in Exhibit A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to suspend or terminate the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

B. This Agreement does not guarantee any amount of work for the Consultant. Task Orders will be developed as determined by the City and as provided for in this Agreement. The Consultant shall be paid by the City for completed services rendered under each approved individual On-call Task Order (Exhibit C). Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals needed to complete the work.

C. The Consultant shall submit monthly invoices to the City for each Task Order after such services have been performed, and a final bill upon completion of all the services described in the Task Order. The City shall pay the full amount of an invoice within sixty (60) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

D. The Consultant will not undertake any work or otherwise financially obligate the City in excess of the not-to-exceed amount in Section II(A) above, without a duly authorized amendment to this Agreement. The amount paid by the City for each invoice shall not exceed the amount in Section II(A) above and the Hourly Billing Rates set forth in Exhibit B, attached hereto.

### **III. Relationship of Parties**

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

### **IV. Duration of Work**

This Agreement is effective as of February 6, 2020, and shall remain in effect until terminated by written notice in accordance with Section V, below. The Consultant shall not begin any work under this Agreement until an authorized Task Order has been agreed upon by the parties and the City has issued a Notice to Proceed. The parties agree that the individual projects assigned to the Consultant may have individual deadlines for completion that must be met, as described in the Task Orders.

### **V. Termination**

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in Section I. Termination shall be effective immediately upon posting or transmission of written notice by the City, or on such date as stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

### **VI. Discrimination**

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its Subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

## **VII. Indemnification**

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

## **VIII. Insurance**

A. The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

B. Minimum Scope of Insurance. Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

C. Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

D. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive its right to subrogation. The Consultant's insurance shall be endorsed to

waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.

4. If any coverage is written on a "claims made" basis, then a minimum of three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

### **IX. Exchange of Information**

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

### **X. Ownership and Use of Records and Documents**

Original documents, drawings, designs, reports, and other work products developed under this Agreement shall belong to and become the joint property of the City and the Consultant. The City and Consultant each shall have the nonexclusive right to do or authorize any of the acts enumerated in 17 U.S.C. § 106, including without limitation reproduction, distribution, performance, or display of the work. The parties agree that there shall be no liability or accounting for profits or revenues made on account of the exercise of any of the aforementioned rights. Each party will retain exclusive interest in and ownership of its intellectual property that was developed before this Agreement takes effect or that was developed outside the scope of this Agreement. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

### **XI. City's Right of Inspection**

Even though the Consultant is an independent contractor with the authority to control and direct the performance, and details of the work authorized under this

Agreement, the work must meet the applicable deadlines established by the City for completion, the work must meet the approval of the City, and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered hereby or accruing out of the performance of such operations.

## **XII. Consultant to Maintain Records to Support Independent Contractor Status**

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

## **XIII. Work Performed at the Consultant's Risk**

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

## **XIV. Non-Waiver of Breach**

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options and the same shall be and remain in full force and effect.

## **XV. Resolution of Disputes and Governing Law**

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor of the City of Black Diamond, who shall determine the term or provision's true intent or meaning. The Mayor of the City of Black Diamond shall also decide all questions that may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement that cannot be resolved by the Mayor's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the



disputed matter, then any resulting litigation must be filed in King County Superior Court, King County, Washington, which shall be the exclusive venue for disputes relating to the interpretation, performance, or enforcement of this Agreement. This Agreement is governed by and shall be construed in accordance with the laws of the State of Washington, exclusive of its choice-of-law rules. The non-prevailing party in any action brought to enforce this Agreement shall pay the other party's expenses and reasonable attorney's fees.

#### **XVI. Written Notice**

Unless otherwise specified, any written notice required by this Agreement shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

#### **CONSULTANT:**

Attn: John Ghilarducci  
Financial Consulting Solutions Group, Inc.  
7525 166th Ave NE D-215, Redmond, WA  
98052

#### **CITY:**

Attn: Andy Williamson  
City of Black Diamond  
P.O. Box 599  
24301 Roberts Drive  
Black Diamond, WA 98010

With a copy to the "City Clerk" at the same address.

#### **XVII. Assignment**

Any assignment of this Agreement by the Consultant without the written consent of the City is void. If the City gives its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment may be made without the City's consent.

#### **XVIII. Modification and Severability**

No waiver, alteration, or modification of any of the provisions of this Agreement is binding unless in writing and signed by the duly authorized representatives of the City and the Consultant.

The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

**XIX. Entire Agreement**

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever this Agreement. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained herein, then this Agreement controls.

AGREED TO AND EXECUTED BY:

**CONSULTANT**

**CITY OF BLACK DIAMOND**

By: \_\_\_\_\_  
John Ghilarducci, Principal and  
President

By: Carol Benson  
Carol Benson, Mayor

**Consultant:**  
**Financial Consulting Solutions**  
**Group, Inc.**  
7525 166th Ave NE D-215,  
Redmond, WA 98052

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

Brenda L. Martiny  
City Clerk

## EXHIBIT A

### Scope of Work

This proposed scope of work is for FCS GROUP to provide on-call financial analysis professional services to the MDRT and to the City of Black Diamond as a whole (hereinafter referred to as the "City"). The financial analysis professional services will include fiscal impact studies that pertain to, but are not limited to, the Ten Trails, Lawson Hills master planned developments.

The scope of services for each task order service will be mutually developed between FCS GROUP and the City and will include: the scope of service; the total not to exceed fee estimate; and the estimated schedule and timelines for deliverables.

The following presents a proposed task plan.

**Task 1 – On call financial analytic services:** We will, at the direction of the City, provide professional financial analytic services. These services may include: reviewing financial statements or other documentation provided by the Master Developer or other parties; preparing financial analysis including calculation of estimated City revenues, City expenditures, and/or payments owed to the City from the Master Developer.

**Task 2 – Written documentation:** If needed, we may prepare, for each task order service, a brief written memorandum summarizing: the issue at hand; the results of the financial analytic services including the estimated revenue or expenditure impact to City operations and its residents as applicable; and any recommendations and next steps for the MDRT and City's consideration.

**Task 3 – Prepare for and participate in any scheduled City meetings:** We will, at the direction of the City, facilitate, support and/or present to any scheduled City team meetings, Council meetings, or any other meetings as needed.

**Task 4 – Project administration:** We will provide general administrative support, including processing and administering task service orders, invoicing, and other general administrative activities.

## EXHIBIT B

### Fee Schedule

#### FCS GROUP 2020 STANDARD FEE SCHEDULE

*Effective JANUARY 1, 2020*

#### LABOR<sup>1</sup>

<u>POSITION/TITLE</u>		<u>BILLING RATE</u>
Principals	Standard Rate	\$270
Senior Project Manager	Standard Rate	\$205 - \$220
Project Manager III	Standard Rate	\$195
Project Manager II	Standard Rate	\$185
Project Manager I	Standard Rate	\$175
Project Consultant	Standard Rate	\$165
Senior Analyst	Standard Rate	\$145
Analyst	Standard Rate	\$135

#### Administrative and Technical Support

Public Relations		\$155
Technical Writer/Graphic Artist		\$130
Administrative Support		\$ 90

#### DIRECT EXPENSES

Major direct expenses, such as travel, mileage, and lodging, will be charged at cost. Other expenses will not be directly charged unless by mutual agreement of the client and FCS GROUP and specific terms will be established in advance prior to expenditure and billing.

#### SUBCONSULTANTS

When applicable, subconsultants will be charged at invoiced cost plus 10%.

<sup>1</sup>Litigation rates are 150% of standard hourly rates for services in support of litigation, settlement negotiations, arbitration and/or mediation processes.

EXHIBIT C

Task Order

City of Black Diamond On-Call Task Request

Date: _____	City Staff Contact: <u>Andrew Williamson</u>
Task Name: _____	Phone: <u>360-851-4541</u>
City Permit: _____	Fax: _____
Consultant: _____	Company name _____
Consultant Project No.: _____	
Consultant Contact Name: _____	
Consultant Phone: _____	

**Scope of Task Request**

**Budget Estimate: \$X,XXX**

**Task Request Approval:**

City of Black Diamond:

\_\_\_\_\_  
Andy Williamson  
Written Name  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
MDRT Director  
Title  
\_\_\_\_\_  
Date

Consultant:

\_\_\_\_\_  
Written Name  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

\*Costs are billed on a time and materials basis, the Consultant shall notify the City should additional funds be necessary to complete the task order. Additional work beyond that which is ordered by the City shall not commence until written notification is received from the City.